

INTERIM JOINT COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

Minutes of the 1st Meeting of the 2004 Interim

July 14, 2004

The 1st meeting of the Interim Joint Committee on Agriculture and Natural Resources was held on Wednesday, July 14, 2004, at 1:00 PM, in Room 149 of the Capitol Annex. Senator Ernie Harris, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Ernie Harris, Co-Chair; Representatives James Gooch, Co-Chair, and Roger Thomas, Co-Chair; Senators David Boswell, Robert Leeper, Vernie McGaha, Joey Pendleton, Damon Thayer, and Elizabeth Tori; Representatives Royce Adams, Adrian Arnold, John Arnold Jr., Sheldon Baugh, Hubert Collins, James Comer, Mike Denham, Keith Hall, Jimmy Higdon, Charlie Hoffman, Thomas McKee, Charles E. Meade, Brad Montell, Fred Nesler, Don Pasley, Marie Rader, Rick Rand, Dottie Sims, Brandon Smith, Jim Stewart, Tommy Turner, Ken Upchurch, Robin L. Webb, Susan Westrom, and Brent Yonts.

Guests: Eric Gregory and Barry Mayfield, East Kentucky Power Cooperative; William Johnson and Curtis Robinson, Logan County Dairy Farmers; David Sparrow, University of Kentucky College of Agriculture; Commissioner Tom Bennett, Department of Fish and Wildlife; Brian Furnish, Governor's Office of Agriculture Policy; Vaughn Murphy, Environmental and Public Protection Cabinet; and Jeff Harper, Kentucky Farm Bureau.

LRC Staff: Tanya Monsanto, Hank Marks, Biff Baker, Lowell Atchley, and Kelly Blevins.

Senator Harris called the meeting to order and the secretary called the roll. After having established a quorum, Sen. Harris welcomed newest member Rep. Chuck Meade. He then recognized incoming co-chairs Rep. Keith Hall for the Subcommittee on Natural Resources and Environment and Rep. Denham and Sen. McGaha for the Subcommittee on Rural Issues.

Rep. Gooch then introduced a resolution honoring the late Sen. Paul Herron. The resolution was adopted by voice vote. Then, Sen. Harris asked the co-chairs of the three subcommittees to give subcommittee reports.

Rep. Denham gave a report of the activities of the Subcommittee on Rural Issues. Rep. Denham stated that the subcommittee received testimony on the impact within Kentucky of United States Department of Agriculture (USDA) funds and discussed grants that have been received by the state for rural development.

Then Rep. Keith Hall gave the report of the Subcommittee on Natural Resources and Environment. Rep. Hall stated that representatives from the Environmental and Public Protection Cabinet and the Cabinet for Health Services are working to streamline the permitting and inspection process for alternative on-site sewage disposal.

Then, Sen. Thayer gave the subcommittee report for the Subcommittee on Horse Farming. He stated that the meeting focused on the establishment and activities of the Kentucky Equine Education Project (KEEP). All three subcommittee reports were adopted by voice vote.

Then Sen. Harris introduced representatives from the Environmental and Public Protection Cabinet (EPPC). Director John Lyons and Lona Brewer with the Division of Air Quality provided an update on the state's efforts to meet federal air quality ozone and particulate matter standards. Mr. Lyons stated that at least 16 committee members have areas in their districts that will be impacted by the new standards. The Division of Air Quality initiated an outreach program to affected areas in 2003.

He then explained when the standards were adopted by U.S. EPA and stated that the standards have been upheld in court. He noted that designations must be made for areas both in and out of attainment and that there are timeframes for the review and measurement of air quality through monitoring stations and for the submittal of revisions to the state implementation plan (SIPs) which outlines the state strategy to meet the federal air quality standards.

Mr. Lyons then discussed the differences between the 8-hour ozone standard and the PM 2.5 standard. He identified where nonattainment areas are located throughout the state and the reason for EPA's nonattainment designations. He explained that each pollutant has its own implementation schedule. He noted that the Division of Air Quality regulates the emission of precursors like nitrogen oxides and sulfur dioxides.

Mr. Lyons also noted that there has not been an ozone violation in the state this summer. He then described the method for measuring ozone exceedences for determining attainment. The ozone designations became effective June 15, 2004 and the nonattainment areas are located all across Kentucky. Kentucky areas are defined as "basic nonattainment" which means that Kentucky will have more flexibility with regard to programs to get back into attainment. For example, Kentucky will not have to implement vehicle emissions testing (VET) as a result of the designations. There will, however, be stricter permitting requirements and a requirement to work with the department of transportation on a plan called transportation conformity that is used to track emissions from automobile traffic. Mr. Lyons then asked for questions about ozone.

Sen. Harris asked Mr. Lyons to explain the difference between large and small industries for the purpose of determining attainment impacts. Mr. Lyons stated that large industries have precursor emissions of over 100 tons per year. Large plants include power plants, large manufacturers like Toyota, refineries and chemical plants. Sen. Harris then asked for clarification about the transportation conformity plan. Ms. Brewer explained there is a mobile source budget and the transportation cabinet must do a plan of an area in nonattainment. She explained that areas out of conformity could lose federal highway funds but Kentucky has not lost federal highway funds in the past.

Sen. Boswell stated that Kentucky repealed both of its VET program and that there should be a corresponding increase in emissions for those areas. He stated that if we repealed the VET in Kentucky then we should move to change the laws at the federal level. Mr. Lyons explained that Kentucky cannot have an increase in pollution levels even if we do away with the VET. Kentucky must make up the emissions allowances somewhere.

Sen. Boswell asked if there is a rippling effect on other industries. Rep. Baugh interjected by asking if the ozone is affected by the jet stream. Mr. Lyons stated that ozone formation is weather dependent. The wet summer has reduced ozone levels.

Rep. Baugh asked how the Division of Air Quality pinpoints the cause of ozone formation. Mr. Lyons stated that the Division uses a modeling program to estimate where the pollutants travel from.

Rep. Baugh concluded that there can be many violators according to that methodology and asked how the division pinpoints the exact source. Mr. Lyons replied that the source cannot be pinpointed. Rep. Baugh stated that some people who aren't at fault could be sanctioned. Mr. Lyons stated that ozone is a regional problem.

Rep. Gooch asked who pays for monitoring. Mr. Lyons replied that Jefferson county pays for their own. The remaining areas are paid for by the Division of Air Quality. Rep. Gooch stated that Jefferson had no violations yet they are still designated as in nonattainment. Why? Mr. Lyons stated that it was due to the methodology of averaging the data and that they are in an metropolitan statistical area in nonattainment and that they have a great deal of automobile traffic. Rep. Gooch concluded that U.S. EPA is acting in an arbitrary manner rather than making designations based on actual data.

Rep. McGaha asked the Division representatives to describe some large industries wanting to expand that would be sanctioned by the new designations. Mr. Lyons stated that he did not know of any industries specifically. Rep. McGaha asked if Kentucky has credits to offset the emissions. Mr. Lyons stated yes.

Rep. Yonts asked for an update on the ruling on Jefferson county's VET. Mr. Lyons stated that the Jefferson county VET was ended without authority to do so. Rep. Yonts asked if the act was unconstitutional. Mr. Lyons replied that Northern Kentucky sought EPA approval before ending the VET. Jefferson county did not.

Rep. Westrom inquired about whether standards for air quality were decreasing. Mr. Lyons stated that he was unaware of the standards decreasing and asked for clarification. Rep. Webb stated that Boyd and Lawrence counties border her district. What is the impact of their air quality on my constituents and what can we do now to protect our health? Mr. Lyons stated that both ozone and 2.5 standards are new and that U.S. EPA has not provided guidance so we cannot provide you with counsel. The Division hopes that federal programs like the Clean Air Interstate rule and new clean gas and diesel rules may pre-empt the need for local initiatives and controls.

Sen. Boswell stated that he supports regulations to keep the air clean but that developing countries like China don't contribute their support. The U.S.A. does everything. Sen. Harris then interjected that the Kyoto Protocol was exactly the situation where the U.S. had to pull out because developing countries would not curtail their emissions. Sen. Boswell asked if the committee could be briefed on national air quality issues and the U.S. role in international accords.

Sen. Harris asked if Oldham is in nonattainment because of upwind violators in Indiana. Mr. Lyons stated yes and that it is an area problem. The commuter traffic contributes to Oldham's problems. You cannot pinpoint where Oldham's pollutants are traveling from because modeling is not precise on such a small scale.

Sen. Harris asked if we should get rid of the monitor in Oldham. How does the Division determine where these monitors should be located? Mr. Lyons replied that each monitor is placed based on a radius and where the Division perceives a problem to be likely to occur.

Then, Mr. Lyons discussed PM 2.5. He described how big the particulate matter is in comparison to the old PM 10 standard. Mr. Lyons also explained the public health problems associated with breathing particulate matter. He identified the sources that contribute to PM 2.5 which include precursors like sulfur-dioxide, volatile organic compounds and ammonia. Mr. Lyons explained that some of these precursors are naturally occurring.

Sen. Harris asked how much of Kentucky's particulate matter is the result of organic precursors which are out of our control. Mr. Lyons stated approximately one quarter of the PM 2.5 comes from organic compounds but some of those are manmade. There are 2 designations from U.S. EPA for nonattainment in PM 2.5. Kentucky will be making a rebuttal to those designations. After the designations are made, Kentucky will have 3 years to revise the state implementation plan. Some of the counties that may be designated as nonattainment have one large emitter or are part of a MSA out of attainment. Mr. Lyons then described outreach efforts with the PM 2.5.

Rep. Denham thanked Mr. Lyons for conducting a stakeholder outreach effort in his district. Rep. McKee asked about the impact of biodiesel and ethanol on particulate matter. Mr. Lyons explained that biodiesel does reduce particulate matter and ozone problems. Ms. Brewer explained that DAQ is looking at communities that can obtain money from the federal highway transportation dollars dedicated to reduce or offset emissions. Ft. Campbell and Christian county is looking to use biodiesel in their school buses.

Rep. McKee stated that he represents Pendleton county and that a company in his district makes biodiesel from cooking oil. Mr. Lyons agreed that biodiesel is an efficient, voluntary approach to reducing emissions. Rep. Pasley thanked the cabinet for conducting outreach efforts in Madison. He asked if there was anything the legislature could do to help DAQ make its case in the rebuttal. Mr. Lyons explained that this committee meeting is a beginning point and that it is helpful to explain to everyone that there are economic impacts to nonattainment.

Rep. Pasley asked if his district is impacted by Fayette's air quality. Sen. Harris stated that Pasley's district is probably impacted the same way Oldham is by S. Indiana. Sen. Harris asked the DAQ to provide updates to the committee regarding the use of biodiesel.

Next, Sen. Harris invited representatives from the dairy industry to discuss milk production and pricing. Ms. Eunice Schlapi, with the Kentucky Department of Agriculture, discussed the federal milk marketing order system. She stated that Kentucky is in one of 7 regional ordering systems. Then Ms. Schlapi discussed the goals of the program

and prevailing milk prices. Milk prices have been very low traditionally however the price spiked this year. They are expected to go down soon. She then described the number of Kentucky milk farmers, herd sizes and the economic impact milk industry has on the state. She explained that even though milk is approximating one billion this year, farmers have struggled.

Sen. Harris asked about herd sizes over the past few years. Ms. Schlappi stated that Kentucky lost over 40% of its herd size in 10 years. We lost most of it due to the 1980 dairy buyout. Rep. Yonts asked if there was a period of overproduction. He said that he recalled that milk got higher in price than gasoline. Ms. Schlapi responded that Kentucky has not seen a decrease in retail prices for milk. It has been very high even as much as \$4.00 a gallon.

Sen. Boswell asked where Kentucky ranks among other states in terms of dairy production. Ms. Schlapi stated that Kentucky ranks 22nd. Rep. Thomas stated that dairy doesn't get enough public air time in Frankfort. He then went on to recap farmgate prices for milk.

Rep. Arnold asked about milk imported into the state. Sen. Harris asked about the different classes of milk. Sen. McGaha asked if Kentucky needs to import milk, then where does Kentucky's milk come from. Ms. Schlapi explained that Kentucky needs more milk than it produces. Milk comes to Kentucky from Indiana, Utah and California.

Sen. McGaha asked if we need regional compacts. Rep. Baugh explained that he has invited dairy farmers from his district to testify about this problem of out-of-state milk shipments into Kentucky. Sen. Harris then invited the dairy farmers to come to the table.

Mr. William Johnson and Mr. Curtis Robinson came to the table. Mr. Johnson spoke first. He described the situation at his dairy farm. He stated that when someone purchases Kentucky milk, the money from the dairy farmer is spent in Kentucky. When someone purchases milk from California, they spend money in California. He then talked about the impact of mergers and acquisitions of large milk marketers on his dairy. He stated that it is difficult to market milk in Kentucky to large milk marketers. He said his milk is being replaced by out-of-state shipments from Indiana. He then described the problems with antibiotic testing of dairy herds.

Sen. Boswell said that we are a state with a milk deficit filled by imports. We are in the same situation as tobacco farmers in that respect. Small dairy farmers are at the mercy of the large corporations.

Mr. Johnson stated that these companies used to assist the dairy farmer but no longer do so. Sen. Boswell asked if there was a way to resolve the problem. Mr. Johnson stated that he didn't know but that there should be an examination of market control. He said that there could be a problem of price fixing.

Sen. Pendleton stated that the committee members understand their problem and wants to assist. Rep. Thomas asked about the role dairy plays in the family. Mr. Johnson and Mr. Robinson stated that they have family owned and operated dairies. Rep. Thomas then stated that the number of farmers is decreasing and that the market for milk is nearly 1 billion dollars. It is an important sector of Kentucky's economy.

Sen. Harris thanked the presenters for attending. There was a motion and second to adjourn.